IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3682 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VITHALBHAI AJUGIA & 3 - Petitioner(s)

Versus

COLLECTOR & 2 - Respondent(s)

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Appearance :

MR SN SHELAT for Petitioner(s) : 1 - 4.
Shri Dipen Desai, AGP for Respondent(s) : 1, 3,
NOTICE SERVED for Respondent(s) : 2, 2.2.1, 2.2.2, 2.2.3, 2.2.4,2.2.5

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/09/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat,

dated 4th January 1988 in Revision Application No. 251 of 1985 in confirming the order passed by the Collector as well as the Deputy Collector, Valsad in cancelling/not certifying Entry No. 1441 with respect to the land bearing Survey No. 180/2-Paiki admeasuring 5 acres and 8 gunthas situate at Village Bhilad, Taluka Umbergaon, District-Valsad.

2. The petitioners had purchased the land bearing Survey No. 180/2-Paiki admeasuring 5 acres and 8 gunthas from original landowner Eknath Arekar by registered Sale Deed dated 27th April 1982 and their names came to be entered into vide Entry No. 1441 dated 22nd May 1982. However the said entry was not certified by the Mamlatdar, Umbergaon on the ground that the petitioner-purchasers are not the agriculturists. The said order came to be challenged by the petitioners unsuccessfully before the Deputy Collector, Valsad as well as Collector, Valsad. Thereafter the petitioners preferred Revision Application No. 25/1995 before the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, dated 4th January 1988 in Revision Application SRD No. 251/1995, the petitioners have preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri Harshadrai Dave, learned advocate appearing on behalf of the petitioners has vehemently submitted that the Revenue authorities while

considering the dispute with regard to mutation entry were not required to go into the legality and validity of the title and/or breach of any other law. It is submitted by him that when the petitioners are the purchasers of the land in question by registered Sale Deed, the Revenue authorities were required to give effect of the same in the Revenue record and the said entry could not have been set aside on the ground that the petitioners are not the agriculturists within the radius of 8 kms., from the land in question. It is submitted by him that in fact the petitioners were holding the land in question. It is also further submitted that even otherwise in view of the amendment in The Bombay Tenancy & Agricultural Lands Act [“the Tenancy Act”] more particularly Section 2 as amended by Gujarat Act of 1995 the requirement that the person must be residing within the radius of 8 Kms., is done away with and therefore also it is requested to allow the present Special Civil Application.

4. Shri Dipen Desai, learned AGP has tried to support the orders passed by the authorities below and has submitted that when the authorities found that the sale in favour of the petitioners was illegal as the petitioners were not the agriculturists and residing within the radius of 8 Kms., the entry in question is rightly not certified

and therefore it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that the petitioners are the purchasers of the land in question which they have purchased by registered Sale Deed. As held by this Court in catena of judgments, the Revenue authorities were not required to consider breach of any other law while considering the mutation Entry. The Revenue Authorities are required to give effect of the Registered Sale Deed in the Revenue Record. It is the contention on behalf of the petitioners that in fact they were the agriculturists and the contention on behalf of the State Government was that they were not residing within the area of 8 Kms. However, in view of the amendment in Section 2 of the Tenancy Act by way of Gujarat Act No.4 of 1995, the requirement that a person must be residing within the radius of 8 Kms., area is done away with and the same is applicable to the present proceedings also. Under the circumstances also, the judgment and order passed by the Secretary (Appeals) and the other authorities not certifying the Entry in question are required to be quashed and set aside.

7. For the foregoing reasons, the petition succeeds. The Judgment and Order, passed by the Deputy Secretary (Appeals), Revenue Department, State

of Gujarat, dated 4th January 1998 in Revision Application SRD No. 251/1985 as well as the order passed by both the authorities below, i.e., Collector, Valsad, as well as the Deputy Collector, Valsad and the Mamlatdar, Umbergaon in not certifying the Entry No. 1441, are hereby quashed and set aside. The Mamlatdar, Umbergaon, is directed to certify the Entry No. 1441 with respect to the land in question, i.e., land bearing Survey No. 180/2-Paiki admeasuring 5 acres and 8 gunthas situate at Village-Bhilad,Taluka-Umbergaon, District-Valsad. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.